

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Buchanan, Melendez, Olsen, and
Waldron)
(Coauthor: Senator Hill)

January 15, 2014

An act to amend Section 680 of the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL’S DIGEST

AB 1517, as introduced, Skinner. DNA evidence.

Existing law establishes the “Sexual Assault Victims’ DNA Bill of Rights,” which, among other things, encourages a law enforcement agency assigned to investigate specified sexual assault offenses to perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner to assure the longest possible statute of limitations. Existing law also requires a law enforcement agency to inform victims of certain sexual assault offenses, if the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill instead would encourage a law enforcement agency to submit sexual assault forensic evidence to the crime lab as soon as practically possible, but no later than 5 days after being booked into evidence, and that the crime lab process evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System as soon as practically possible, but no later than 30 days after the evidence is submitted by a law enforcement agency, in order to assure the longest possible statute of limitations. The bill would also

require a law enforcement agency to inform victims of certain sexual assault offenses, whether or not the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits. By imposing additional requirements on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 680 of the Penal Code is amended to
2 read:
3 680. (a) This section shall be known as and may be cited as
4 the “Sexual Assault Victims’ DNA Bill of Rights.”
5 (b) The Legislature finds and declares all of the following:
6 (1) Deoxyribonucleic acid (DNA) and forensic identification
7 analysis is a powerful law enforcement tool for identifying and
8 prosecuting sexual assault offenders.
9 (2) Victims of sexual assaults have a strong interest in the
10 investigation and prosecution of their cases.
11 (3) Law enforcement agencies have an obligation to victims of
12 sexual assaults in the proper handling, retention and timely DNA
13 testing of rape kit evidence or other crime scene evidence and to
14 be responsive to victims concerning the developments of forensic
15 testing and the investigation of their cases.
16 (4) The growth of the Department of Justice’s Cal-DNA
17 databank and the national databank through the Combined DNA
18 Index System (CODIS) makes it possible for many sexual assault
19 perpetrators to be identified after their first offense, provided that
20 rape kit evidence is analyzed in a timely manner.
21 (5) Timely DNA analysis of rape kit evidence is a core public
22 safety issue affecting men, women, and children in the State of

1 California. It is the intent of the Legislature, in order to further
2 public safety, to encourage DNA analysis of rape kit evidence
3 within the time limits imposed by subparagraphs (A) and (B) of
4 paragraph (1) of subdivision ~~(i)~~ (g) of Section 803.

5 ~~(6) A law~~ *In order to assure the longest possible statute of*
6 *limitations, pursuant to subparagraphs (A) and (B) of paragraph*
7 *(1) of subdivision (g) of Section 803, the following should occur:*

8 *(A) A law enforcement agency assigned to investigate a sexual*
9 *assault offense specified in Section 261, 261.5, 262, 286, 288a, or*
10 *289 should perform DNA testing of rape kit evidence or other*
11 *crime scene evidence in a timely manner in order to assure the*
12 *longest possible statute of limitations, pursuant to subparagraphs*
13 *(A) and (B) of paragraph (1) of subdivision (i) of Section 803.*
14 *submit sexual assault forensic evidence to the crime lab as soon*
15 *as practically possible, but no later than five days after being*
16 *booked into evidence.*

17 *(B) The crime lab should process evidence, create DNA profiles*
18 *when able, and upload qualifying DNA profiles into CODIS as*
19 *soon as practically possible, but no later than 30 days after*
20 *submission by a law enforcement agency.*

21 (7) For the purpose of this section, “law enforcement” means
22 the law enforcement agency with the primary responsibility for
23 investigating an alleged sexual assault.

24 (c) (1) Upon the request of a sexual assault victim the law
25 enforcement agency investigating a violation of Section 261, 261.5,
26 262, 286, 288a, or 289 may inform the victim of the status of the
27 DNA testing of the rape kit evidence or other crime scene evidence
28 from the victim’s case. The law enforcement agency may, at its
29 discretion, require that the victim’s request be in writing. The law
30 enforcement agency may respond to the victim’s request with
31 either an oral or written communication, or by electronic mail, if
32 an electronic mail address is available. Nothing in this subdivision
33 requires that the law enforcement agency communicate with the
34 victim or the victim’s designee regarding the status of DNA testing
35 absent a specific request from the victim or the victim’s designee.

36 (2) Subject to the commitment of sufficient resources to respond
37 to requests for information, sexual assault victims have the
38 following rights:

1 (A) The right to be informed whether or not a DNA profile of
2 the assailant was obtained from the testing of the rape kit evidence
3 or other crime scene evidence from their case.

4 (B) The right to be informed whether or not the DNA profile
5 of the assailant developed from the rape kit evidence or other crime
6 scene evidence has been entered into the Department of Justice
7 Data Bank of case evidence.

8 (C) The right to be informed whether or not there is a match
9 between the DNA profile of the assailant developed from the rape
10 kit evidence or other crime scene evidence and a DNA profile
11 contained in the Department of Justice Convicted Offender DNA
12 Data Base, provided that disclosure would not impede or
13 compromise an ongoing investigation.

14 (3) This subdivision is intended to encourage law enforcement
15 agencies to notify victims of information which is in their
16 possession. It is not intended to affect the manner of or frequency
17 with which the Department of Justice provides this information to
18 law enforcement agencies.

19 (d) If the law enforcement agency elects not to analyze DNA
20 evidence within the time limits established by subparagraphs (A)
21 and (B) of paragraph (1) of subdivision-~~(i)~~ (g) of Section 803, a
22 victim of a sexual assault offense specified in Section 261, 261.5,
23 262, 286, 288a, or ~~289~~, where the identity of the perpetrator is in
24 issue, 289 shall be informed, either orally or in writing, of that fact
25 by the law enforcement agency.

26 (e) If the law enforcement agency intends to destroy or dispose
27 of rape kit evidence or other crime scene evidence from an
28 unsolved sexual assault case prior to the expiration of the statute
29 of limitations as set forth in Section 803, a victim of a violation
30 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
31 notification by the law enforcement agency of that intention.

32 (f) Written notification under subdivision (d) or (e) shall be
33 made at least 60 days prior to the destruction or disposal of the
34 rape kit evidence or other crime scene evidence from an unsolved
35 sexual assault case where the election not to analyze the DNA or
36 the destruction or disposal occurs prior to the expiration of the
37 statute of limitations specified in subdivision-~~(i)~~ (g) of Section
38 803.

39 (g) A sexual assault victim may designate a sexual assault victim
40 advocate, or other support person of the victim's choosing, to act

1 as a recipient of the above information required to be provided by
2 this section.

3 (h) It is the intent of the Legislature that a law enforcement
4 agency responsible for providing information under subdivision
5 (c) do so in a timely manner and, upon request of the victim or the
6 victim's designee, advise the victim or the victim's designee of
7 any significant changes in the information of which the law
8 enforcement agency is aware. In order to be entitled to receive
9 notice under this section, the victim or the victim's designee shall
10 keep appropriate authorities informed of the name, address,
11 telephone number, and electronic mail address of the person to
12 whom the information should be provided, and any changes of the
13 name, address, telephone number, and electronic mail address, if
14 an electronic mailing address is available.

15 (i) A defendant or person accused or convicted of a crime against
16 the victim shall have no standing to object to any failure to comply
17 with this section. The failure to provide a right or notice to a sexual
18 assault victim under this section may not be used by a defendant
19 to seek to have the conviction or sentence set aside.

20 (j) The sole civil or criminal remedy available to a sexual assault
21 victim for a law enforcement agency's failure to fulfill its
22 responsibilities under this section is standing to file a writ of
23 mandamus to require compliance with subdivision (d) or (e).

24 SEC. 2. If the Commission on State Mandates determines that
25 this act contains costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code.